

This Opinion is Not a  
Precedent of the TTAB

Mailed: May 21, 2021

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board  
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*In re Yodeets Digital, LLC*

Serial No. 88977161  
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Ellen Reilly of Reilly Intellectual Property Law Firm  
for Yodeets Digital, LLC.

Alex Seong Keam, Trademark Examining Attorney, Law Office 114,  
Laurie Kaufman, Managing Attorney.

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Before Cataldo, Pologeorgis and English,  
Administrative Trademark Judges.

Opinion by English, Administrative Trademark Judge:

Yodeets Digital, LLC (“Applicant”) seeks registration on the Principal Register of the standard character mark GRAVITY HAUS for “Social club services, namely, arranging, organizing, and hosting social events, get-togethers, night club services and parties for club members; conducting guided outdoor expeditions and activities in the nature of guided hiking tours for club members” in International Class 41.<sup>1</sup>

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<sup>1</sup> Application Serial No. 88977161; filed March 5, 2019 under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), based on Applicant’s allegation of a bona fide intent to use the mark in commerce. The application includes the following translation statement: “The wording ‘HAUS’ means ‘HOUSE’ in English.”

The Examining Attorney has refused registration under Section 6(a) of the Trademark Act, 15 U.S.C. § 1056(a), based on Applicant's failure to comply with the requirement to disclaim the term "HAUS" on the ground that the word is merely descriptive of Applicant's services within the meaning of Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1). When the refusal was made final, Applicant appealed and requested reconsideration. The Examining Attorney denied the request for reconsideration and the appeal proceeded. The appeal is fully briefed.<sup>2</sup>

We affirm the refusal to register.

## **I. Evidentiary Issues**

Applicant attached exhibits to its brief and the Examining Attorney has objected to the extent the exhibits are not of record. Trademark Rule 2.142(d), 37 C.F.R. § 2.142(d), provides that "[t]he record in the application should be complete prior to the filing of the appeal. Evidence should not be filed with the Board after the filing of a notice of appeal." Accordingly, the Examining Attorney's objection is sustained. We

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The application as filed also included "temporary accommodations in the nature of lodging" in International Class 43. During prosecution, Applicant requested and the Office processed a request to divide out the International Class 41 services into the child application subject to this appeal.

<sup>2</sup> Citations in this opinion to the briefs refer to TTABVUE, the Board's online docketing system. *Turdin v. Tribolite, Ltd.*, 109 USPQ2d 1473, 1476 n.6 (TTAB 2014). Specifically, the number preceding TTABVUE corresponds to the docket entry number, and any numbers following TTABVUE refer to the page(s) of the docket entry where the cited materials appear.

Citations to the prosecution record are to the Trademark Status & Document Retrieval ("TSDR") system by page number in the downloadable .pdf versions of the documents.

have not considered any exhibits to Applicant's brief that were not properly introduced during prosecution.<sup>3</sup>

## II. Analysis

A requirement under Trademark Act Section 6 for a disclaimer of unregistrable matter in a mark is appropriate when the matter is merely descriptive of the goods or services at issue. *In re Stereotaxis Inc.*, 429 F.3d 1039, 77 USPQ2d 1087, 1089 (Fed. Cir. 2005). A disclaimer is a statement that the applicant does not claim the exclusive right to use a specified element or elements of the mark in a trademark application or registration. *In re White Jasmine LLC*, 106 USPQ2d 1385, 1394 (TTAB 2013). "The effect of a disclaimer is to disavow any exclusive right to the use of a specified word, phrase, or design outside of its use within a composite mark." *Id.* (quoting *In re Franklin Press, Inc.*, 597 F.2d 270, 201 USPQ 662, 665 (CCPA 1979)). Merely descriptive or generic terms are unregistrable under Trademark Act Section 2(e)(1), and therefore are subject to a disclaimer requirement if the mark is otherwise registrable. Failure to comply with a disclaimer requirement is a ground for refusal of registration. *See In re La. Fish Fry Prods., Ltd.*, 797 F.3d 1332, 116 USPQ2d 1262, 1266 (Fed. Cir. 2015); *In re RiseSmart Inc.*, 104 USPQ2d 1931, 1933 (TTAB 2012).

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<sup>3</sup> If Applicant wished to introduce additional evidence, its recourse was to file a written request with the Board to suspend the appeal and remand the application for further examination pursuant to Trademark Rule 2.142(d). TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) § 1207.02 (2020).

To the extent the exhibits to the briefs are duplicates of material in the record, it was not necessary for Applicant to attach copies to its brief. Nor was it a convenience to the Board. During prosecution Applicant also submitted some duplicate evidence, which complicated our review of the record. *See, e.g., In re I-Coat Co.*, 126 USPQ2d 1730, 1733-34 (TTAB 2018).

A term is merely descriptive within the meaning of Section 2(e)(1) if it immediately conveys knowledge of an ingredient, quality, characteristic, function, feature, purpose, or use of the goods or services with which it is used. *See, e.g., In re Chamber of Commerce of the U.S.*, 675 F.3d 1297, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012); *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009, 1009 (Fed. Cir. 1987). Whether a particular term is merely descriptive must be determined not in the abstract, but in relation to the goods or services for which registration is sought, the context in which the mark is used, and the possible significance that the mark is likely to have to the average purchaser encountering the goods or services in the marketplace. *See In re Bayer Aktiengesellschaft*, 488 F.3d 960, 82 USPQ2d 1818, 1831 (Fed. Cir. 2007); *Couch/Braunsdorf Affinity, Inc. v. 12 Interactive, LLC*, 110 USPQ2d 1458, 1473 (TTAB 2014); *In re Remacle*, 66 USPQ2d 1222, 1224 (TTAB 2002); *In re Am. Greetings Corp.*, 226 USPQ 365, 366 (TTAB 1985) (“Whether consumers could guess what the product [or service] is from consideration of the mark alone is not the test.”). In other words, the issue is whether someone who knows what the goods or services are will understand the mark to convey information about them. *In re Fat Boys Water Sports LLC*, 118 USPQ2d 1511, 1512 (TTAB 2016); *see also DuoProSS Meditech Corp. v. Inviro Med. Devices Ltd.*, 695 F.3d 1247, 103 USPQ2d 1753, 1757 (Fed. Cir. 2012) (we evaluate whether someone who knows what the goods or services are will understand the mark to convey information about them).

It is the Examining Attorney’s burden to prove that a term is merely descriptive of an applicant’s goods or services. *In re Accelerate s.a.l.*, 101 USPQ2d 2047, 2052

(TTAB 2012). The determination that a term is merely descriptive is a finding of fact and must be based on substantial evidence. *Bayer Aktiengesellschaft*, 82 USPQ2d at 1831.

**A. Whether “HAUS” Is Descriptive of Applicant’s Services**

Applicant does not dispute that “haus” is German for “house.”<sup>4</sup> Non-English wording that comprises an unregistrable component of a mark is subject to a disclaimer.

The Examining Attorney points to the following definitions for “house” as merely descriptive of Applicant’s social club services:

- “a company or organization involved in a particular activity”;
- “a building devoted to a particular activity”;
- “restaurant, hotel, bar, or club”; and
- “[a] facility, such as a theater or restaurant, that provides entertainment or food for the public, a movie house, the specialty of the house.”<sup>5</sup>

Applicant argues that “house” is not merely descriptive of its services because: (1) it “does not provide any indication of the type of services offered and certainly does

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<sup>4</sup> See n.1 above citing translation statement. See also February 21, 2020 Request for Reconsideration, TSDR 7.

<sup>5</sup> August 21, 2019 Final Office Action, TSDR 7 (MacMillan Dictionary); May 13, 2019 Office Action, TSDR 88 (American Heritage Dictionary). Portions of the printouts from the MacMillan Dictionary are obscured by icons. We take judicial notice of the definitions from MacMillan Dictionary that are not visible in their entirety. ([https://www.macmillandictionary.com/us/dictionary/american/house\\_1](https://www.macmillandictionary.com/us/dictionary/american/house_1), last visited May 21, 2021). *In re Red Bull GmbH*, 78 USPQ2d 1375, 1377 (TTAB 2006) (“As a general rule, the Board may take judicial notice of dictionary evidence.”).

not identify social club services”; (2) it means “a building in which people live; residence for human beings, a household, a family, including ancestors and descendants”;<sup>6</sup> (2) “house” is too broad to be “held merely descriptive” of its services;<sup>7</sup> (3) “[t]he services description, including guided tour expeditions ... do[es] not indicate in any way that the services will likely be provided in a building”;<sup>8</sup> and (4) the Office has not consistently required disclaimers of the word “house” or “haus” for “goods and services outside of hotel services ... creat[ing] inconsistencies and uncertainty for the trademark holder.”<sup>9</sup>

“So long as any one of the meanings of a word is descriptive, the word may be merely descriptive.” *In re IP Carrier Consulting Grp.*, 84 USPQ2d 1028, 1034 (TTAB 2007); *see also Robinson v. Hot Grabba Leaf, LLC*, 2019 USPQ2d 149089, at \*5 (TTAB 2019) (“That a term may have other meanings in different contexts is not controlling.”) (citing *In re Canine Caviar Pet Foods, Inc.*, 126 USPQ2d 1590, 1598 (TTAB 2018)); *In re Mueller Sports Med., Inc.*, 126 USPQ2d 1584, 1590 (TTAB 2018) (“It is well settled that so long as any one of the meanings of a term is descriptive, the

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<sup>6</sup> Appeal Brief, 5 TTABVUE 10-11 (citing definition from [www.dictionary.com](http://www.dictionary.com)); *see also* February 21, 2020 Request for Reconsideration, TSDR 16.

<sup>7</sup> Appeal Brief, 5 TTABVUE at 13.

<sup>8</sup> Reply Brief, 10 TTABVUE 2.

<sup>9</sup> Appeal Brief, 5 TTABVUE 16.

In its August 12, 2019 Office action response, Applicant argued that the Office did not require a disclaimer of the word “haus” in its application Serial No. 87950947 for the mark GH GRAVITY HAUS & Design for the same services as those involved here. TSDR 9, 14. Applicant, however, does not dispute that the Office has since imposed such a requirement and that application Serial No. 87950947 has been suspended pending the outcome of this proceeding. Examining Attorney’s Brief, 9 TTABVUE 3, n.1.

term may be considered to be merely descriptive.”) (quoting *In re Chopper Indus.*, 222 USPQ 258, 259 (TTAB 1984)). Accordingly, the fact that the definition of “house” as a family residence does not describe Applicant’s services is not determinative of whether the term is descriptive.

The definition of “house” as a “restaurant, hotel, bar, or club” immediately describes a feature or characteristic of social club services, namely, that the services are often arranged, organized and hosted in a “house.” The general consuming public of Applicant’s social club services are likely to immediately understand that the German word “haus,” meaning “house,” refers to the place or venue where social club services are rendered, e.g. a bar, restaurant, club.

The immediate descriptive meaning of “house” for Applicant’s “social club services” is reflected by the Wikipedia entry for “social club”:<sup>10</sup>

A social club may be a group of people or the place where they meet, generally formed around a common interest, occupation, or activity. ... **Social activities clubs** are a modern combination of several types of clubs and reflect today’s more eclectic and varied society.... **Some have a traditional clubhouse, bar, or restaurant where members gather**; others do not.

The record also shows a number of third-parties offering social club services under marks that incorporate the descriptive word “house” or “haus”: PARK HOUSE, SOHO HOUSE, DUMBO HOUSE, LITTLE BEACH HOUSE, COMMON HOUSE,

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<sup>10</sup> May 13, 2019 Office Action, TSDR 85-87 (emphasis added).

FLAMINGO HOUSE, ART HAUS, SOCIAL HAUS, TUMBLE HAUS, and BAT HAUS.<sup>11</sup>

Applicant’s services do not exclude “social club services” provided in a dedicated venue or “house.” Moreover, the fact that the application also covers “conducting guided tour expeditions and activities in the nature of guided hiking tours for club members” – activities that would not be provided in a restaurant, bar or club – is of no consequence. A word is merely descriptive where, as here, it describes **any** of the goods or services for which registration is sought. *In re Chamber of Commerce of the U.S.*, 102 USPQ2d at 1219; *In re Stereotaxis Inc.*, 77 USPQ2d at 1089.

Finally, “[w]hile we recognize that consistency is highly desirable . . . consistency in examination is not itself a substantive rule of trademark law, and a desire for consistency with the decisions of prior examining attorneys must yield to proper determinations under the Trademark Act and rules.” *In re Ala. Tourism Dep’t*, 2020 USPQ2d 10485, at \*11 (TTAB 2020) (quoting *In re Am. Furniture Warehouse Co.*, 126 USPQ2d 1400, 1407 (TTAB 2018) (internal quotations omitted)). Each case must be decided on its own merits.<sup>12</sup> *See, e.g., In re Nett Designs Inc.*, 236 F.3d 1339, 57

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<sup>11</sup> March 16, 2020 Denial of Request for Reconsideration, TSDR 6-57, 67-72, 113-117, 136-137, 153-158; August 21, 2020 Final Office Action, TSDR 10-11.

<sup>12</sup> Applicant cites several marks that have not yet registered. August 12, 2019 Office Action Response, TSDR 16-30; February 21, 2020 Request for Reconsideration, TSDR 33-40. An application is proof only that an application was filed. *In re Toshiba Med. Sys. Corp.*, 91 USPQ2d 1266, 1270 n.8 (TTAB 2009) (“[T]he third-party applications submitted by applicant have ‘no probative value other than as evidence that the application was filed.’”); *In re Fiesta Palms LLC*, 85 USPQ2d 1360, 1366 n.7 (TTAB 2007). Moreover, many of the cited marks are compound word marks so a disclaimer is not required: STARTERHAUS, PUBLICHAUS, FARMHAUS, Z ZEEHAUS. August 12, 2019 Office Action Response, TSDR 16-29. *In re EBS Data Processing, Inc.*, 212 USPQ 964, 966 (TTAB 1981).

USPQ2d 1564, 1566 (Fed. Cir. 2001) (holding ULTIMATE BIKE RACK merely descriptive of “bicycle racks” despite the presence of “ultimate” without a disclaimer in other marks on the Principal Register).

### **B. Whether Applicant’s Mark is Unitary**

Next we consider whether Applicant’s Mark is unitary because if matter that comprises a mark or the relevant portion of a mark is unitary, no disclaimer of an element, whether descriptive, generic, or otherwise, is required. TRADEMARK MANUAL OF EXAMINING PROCEDURE (TMEP) § 1213.05 (Oct. 2018); *see also Dena Corp. v. Belvedere Int’l Inc.*, 950 F.2d 1555, 21 USPQ2d 1047, 1050 (Fed. Cir. 1991) (“[A] descriptive element in some marks may lose its descriptive significance if integrated with other arbitrary terms”). A mark is unitary if it creates a single, distinct commercial impression. *In re Slokevage*, 441 F.3d 957, 78 USPQ2d 1395, 1400 (Fed. Cir. 2006) (citing *Dena Corp.*, 21 USPQ2d at 1052).

Applicant argues that “[t]he terms GRAVITY HAUS used together create a sense of unity as the term GRAVITY indicates something that is held to the ground or is of this earth and HAUS represents the article that is held down by gravity. A house is typically centered by gravity and suggests a location that is grounded or stable.”<sup>13</sup> There is nothing in the record to support that the average purchaser would attribute such a connotation to Applicant’s mark. *See Dena Corp.*, 21 USPQ2d at 1052 (“[N]o particular meaning in the words EUROPEANFORMULA or the circular design links these detached features. Belvedere presents no evidence about the meaning of these

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<sup>13</sup> Appeal Brief, 5 TTABVUE 14.

features.”). Nor is there anything ingenious, unexpected or incongruous in the combination of the words “GRAVITY” and “HAUS” as applied to Applicant’s services. *See, e.g., In re Colonial Stores Inc.*, 394 F.2d 549, 157 USPQ 382 (CCPA 1968) (SUGAR & SPICE held not merely descriptive of bakery products); *In re Shutts*, 217 USPQ 363 (TTAB 1983) (SNO-RAKE held not merely descriptive of a snow removal hand tool).

We also are not persuaded that Applicant’s mark is “a unitary slogan.”<sup>14</sup> A slogan is “a brief attention-getting phrase used in advertising or promotion” and “a catch phrase used to advertise a product.” TMEP § 1213.05 (internal quotation marks omitted). There is no evidence that Applicant’s mark is used as a “catch phrase,” and in fact, Applicant identifies its mark as a “house mark.”<sup>15</sup>

### III. Conclusion

“House,” the English translation of the German word “haus,” immediately describes a feature or characteristic of “social club services,” namely, that the services are the type rendered in a club, restaurant or bar, also known as a “house.” Applicant’s mark GRAVITY HAUS is not a unitary mark or slogan because it does not have a distinct meaning independent from the mark’s constituent elements.

**Decision:** The refusal to register Applicant’s mark on the ground that Applicant failed to comply with the Examining Attorney’s requirement to disclaim the word “haus” is affirmed.

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<sup>14</sup> *Id.* at 14.

<sup>15</sup> *Id.* at 15.

However, if Applicant submits the required disclaimer of the term “haus” to the Board within 30 days from the date of this decision and prior to filing any appeal of this decision, the requirement for the disclaimer will have been met. Trademark Rule 2.142(g), 37 C.F.R. § 2.142(g); TMEP § 1218. The disclaimer should read as follows: “No claim is made to the exclusive right to use ‘HAUS’ apart from the mark as shown.” TMEP § 1213.08(a)(i).